

UB Law Forum

Volume 4
Number 1 *Winter 1989*

Article 13

1-1-1989

Glimpses of Life in the Soviet Union

Marjorie Girth
University at Buffalo School of Law

Follow this and additional works at: https://digitalcommons.law.buffalo.edu/ub_law_forum

Recommended Citation

Girth, Marjorie (1989) "Glimpses of Life in the Soviet Union," *UB Law Forum*: Vol. 4 : No. 1 , Article 13.
Available at: https://digitalcommons.law.buffalo.edu/ub_law_forum/vol4/iss1/13

This Article is brought to you for free and open access by the Alumni Publications at Digital Commons @ University at Buffalo School of Law. It has been accepted for inclusion in UB Law Forum by an authorized editor of Digital Commons @ University at Buffalo School of Law. For more information, please contact lawscholar@buffalo.edu.

Glimpses of Life in the Soviet Union

By Marjorie Girth

Last May I traveled to the Soviet Union with a delegation of female practicing attorneys, law professors and judges. Our trip occurred under the auspices of an agreement to encourage professional exchanges that exists between the American Bar Association and the Association of Soviet Lawyers. In addition to the ASL, our Soviet hosts were the US-USSR Friendship Society and the Soviet Women's Committee. All three organizations are state-sponsored, and participation is therefore officially-sanctioned, not voluntary. Intourist coordinated the logistical arrangements.

The purpose of our trip was to meet with our professional counterparts and to view legal proceedings. As is customary, our Soviet hosts did not disclose our agenda in advance. Upon arrival in Moscow, we discovered that the pre-planned professional agenda was unacceptably light, so that additions had to be negotiated continuously during our three week stay. Ultimately, as co-leader of the delegation, I received an apology revealing that the Soviets "... had very significantly underestimated the seriousness of this group." Whether their advance perception was affected by simple mis-communication or by the fact that often American "educational" tour directors request just enough professional programming to satisfy our tax laws' requirements, or by their perceptions concerning an all-female delegation, we will never know. We do know that our Soviet hosts completely ignored the requirement of a "spouses' program for men", because they genuinely found such a request to be incredible and assumed that an interpretation error had occurred.

In any event, the need to negotiate gave us invaluable experience in attempting to function in a professional context. No

telephone books or "information operators" exist. Buildings often have no directories nor receptionists. The same street number may be used for six or eight buildings in a complex. The operating assumption seems to be that if you have a right to know, you already know. If you lack information, it is very difficult to function efficiently.

The four cities that we visited also provided a wide range of cultural contexts. Moscow was, for me, colossal in many respects. Obviously an international capital, it is both large geographically and massively bureaucratized. Kiev is vibrant and colorful, but its citizens remain very anxious about the long-term consequences of the Chernobyl disaster. Baku is an oil industry center nestled between the desert and the Caspian Sea not far from Iran. Most of its citizens are Moslem in heritage, and "hero mothers" who have more than ten children abound. Finally, Leningrad, which is very reminiscent of Western European cities, offers beautiful canal-threaded vistas. Its people are the most outspokenly-preoccupied with the Soviets' tragic losses during World War II, although memories of that war were repeatedly brought to our attention in every city that we visited.

The diversity of these contexts causes me to be very tentative about drawing conclusions from our observations of the Soviet legal system. Nonetheless, impressions remain, and I share them with the hope that those of you who have similar experiences will discuss your observations publicly.

Throughout the visit, I was dependent upon the skill of both American and Soviet interpreters, because my knowledge of the Russian language is embarrassingly fragmentary. Moreover, the very significant differences in assumptions that underlay the questions of both the Soviet and

American participants created a significant risk of misunderstanding despite everyone's best efforts to communicate openly.

The courts that we observed were People's Courts, which handle civil and criminal matters in their respective urban districts. Jury trials do not exist in the Soviet Union, but the proceedings are presided over by a judge and two lay assessors. Until very recently, judicial elections were uncontested, but Mikhail Gorbachev has encouraged competition for these petitions. The lay assessors are also elected by the workers at their enterprises. They serve for two and a half weeks per year unless they happen to be assigned to a longer trial. The judge and the lay assessors have equal voting power, but the judge did almost all of the questioning in the proceedings that we observed.

For the Soviet legal system the ultimate goal is to ascertain the truth. Soviet "jurists" (as all lawyers are called) seem to find it mystifying that our system could allow results to depend upon an advocate's skill. Consequently, the primary focus in the Soviet system seems to be in the development of the investigatory file once a criminal or civil incident occurs. This responsibility falls to the procurator, whose professional staff serve in both an administrative investigatory capacity as well as a prosecutorial role in criminal cases. Obviously, that combination of roles seemed awkward to our participants.

The file consists of interviews with anyone who might have information concerning the incident. Once complete, it is forwarded to the judge and to the lawyers, if any. If the judge is dissatisfied, or a lawyer persuades the judge that the investigation has been insufficient, the file is returned for further investigation.

By the time a trial occurs, the judge has



A criminologist at the Moscow Institute for the Study of the Problems of Strengthening Legality.

essentially approved the process by which the procurator has assembled the facts. The trial then may consist largely of a final check on the accuracy of the record. If facts are disputed in the file, conflicting testimony will be heard. Proceedings under those circumstances appear to be very informal by American standards. The parties may ask questions. Relatives or acquaintances may comment from the audience. No evidence seems to be excluded, because any information might lead to a more complete understanding of the truth.

Once the judge and the lay assessors reach a decision, they either award the tangible civil damages that the evidence has revealed or they impose the statutorily-prescribed penalty in criminal cases. Appeals may be taken to the City Court and to the Supreme Court of the particular republic, but higher court decisions will have no precedential effect in future cases. The Soviet Union's Supreme Court does not hear individual cases, but serves an educational role by issuing publications concerning legal issues that it anticipates to be of general interest.

We also had opportunities to discuss the process of developing law reform proposals with professionals who were assigned to various research institutes. The project that

was nearest completion was the proposed revision of the All-Union Criminal Code. It was being developed at Moscow's Institute for the Study of the Problems of Strengthening Legality. The Institute's senior scholars spoke quite candidly about problems that seemed familiar to American researchers. They often found their substantive conclusions to be ahead of the prevailing political consensus and frequently had to respond to requests for studies rather than being able to control their research agenda. The Institute's Director invited us to join them later in our visit at a Senior Criminologists' Convention in Baku. There we heard presentations on a wide range of topics, including the judge's role in determining the causes of a crime, deterring international terrorism, and determining the extent to which criminal law enforcement deters prostitution.

Representatives of the Soviet Women's Committee in each city similarly shared concerns that seemed very familiar. Alcohol abuse, and the accompanying spouse and child abuse, are now acknowledged problems, because of Mikhail Gorbachev's anti-alcoholism campaign. They also frequently mentioned the problems of illegitimate children and obtaining adequate child support. Juvenile crime is another major concern. In this context, our legal systems

diverge somewhat, because Soviet courts deal only with behavior that amounts to a crime. Situations involving uncontrollable behavior (comparable to our "person in need of supervision") are referred to the local "soviet", which is the elected council of area representatives. The soviet decides what activities will produce an acceptable change in behavior and monitors the juvenile's progress. My impression is that Soviet life, even in the major cities, is much less anonymous than it could be in this country, because the sense of community responsibility for maintaining order is much stronger.

Business developments are also currently of major interest. In early 1987 the Supreme Soviet passed legislation authorizing the establishment of joint ventures. At the time of our visit approximately 40 joint venture agreements had been signed, with another 200-300 being negotiated. American lawyers who had worked on these projects reported that their counterparts in the negotiations were usually the relevant Ministry officials, not lawyers. Although such ventures are exempt from the requirements of the current five-year plan, they must still obtain all of their resources, including housing for American participants, from enterprises or Ministries that are subject to the plan. Consequently, it has proved to be extremely difficult to implement operating plans for the joint ventures even after the often-complicated negotiations successfully reach agreement.

If glasnost and perestroika remain official Soviet policy, I anticipate that the number of authorized meetings between Soviet and American professionals will continue to increase. I was surprised by how many of our Soviet counterparts had never previously met with a group of Americans to discuss mutual concerns. They often described themselves as "nervous" at the prospect of our meetings, and almost invariably closed a session with the following message that is based upon an ancient proverb:

"We have, of course, listened very carefully to what you have said, but it is even more important for us to have seen your eyes."

I also felt that it was very important for us to have seen them, as people of both countries seek greater mutual understanding. ■

Marjorie Girth is Professor of Law at UB Law School. Her teaching interests include bankruptcy and reorganization, commercial law, consumer protection, contracts, and gender-based discrimination.



Professor Philip Halpern addresses Rochester alumni.